These notes refer to the Private Tenancies Act (Northern Ireland) 2022 (c.20) which received Royal Assent on 27 April 2022

Private Tenancies Act (Northern Ireland) 2022

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1:

Tenant to be given notice regarding certain matters

This section inserts new Articles 4A, 4B and 4C into the 2006 Order.

New Article 4A requires the landlord of a private tenancy, within 28 days of granting it, to provide the tenant, free of charge, with a notice containing particulars and other detail relating to the tenancy that will be prescribed in regulations made by the Department. The regulation making power could be used, for example, to provide that the notice contain the main terms of the tenancy.

Article 4A(4) provides that any landlord who fails to give the required notice is guilty of an offence under the 2006 Order.

New Article 4B requires landlords, on the variation of a prescribed term of a tenancy (to be prescribed in regulations made by the Department), to provide the tenant, free of charge, with a notice containing certain information relating to the variation (which information will also be prescribed in the regulations). The landlord will be required to do this within 28 days of the variation.

Article 4B(5) provides that any landlord who fails to give the required notice is guilty of an offence under the 2006 Order.

New Article 4C concerns offences related to a continued failure by a landlord to serve a notice under Article 4A or 4B. Under paragraph (1), a landlord who fails to provide a notice required by Article 4A or 4B and is convicted in respect of that failure is deemed to have committed a further offence under that Article in respect of that failure where the failure continues for more than 14 days after conviction.

Under paragraphs (2) and (3), a landlord who receives a fixed penalty notice in respect of a failure to serve a notice and pays it but continues in that failure for more than 14 days after payment is guilty of an offence under the 2006 Order.

Subsections (3) and (4) of this section amend Articles 68 and 68A of the 2006 Order respectively. The amendment of Article 68(1) ensures that the offences under Articles 4A(4), 4B(5) and 4C(3) (including where further offences under

Articles 4A and 4B are deemed to have been committed) are punishable on summary conviction with a fine not exceeding level 4 on the standard scale. By providing that those offences are "offences under this Order", they come within Article 68(3) and as such can be prosecuted by district councils.

The amendment of Article 68A provides that fixed penalty notices can be given in respect of the three offences, with the exception that a fixed penalty notice may not be given in respect of offences under Articles 4A(4) and 4B(5) where they are deemed to have been committed by virtue of Article 4C(1). In the latter case the only available option is summary conviction. The amendment also provides that the maximum fixed penalty amount is one-fifth of the maximum fine payable on summary conviction.

Subsection (5) of this section omits the uncommenced section 1 of the Housing (Amendment) Act (Northern Ireland) 2011. That section repeals Article 4 of the 2006 Order (which requires a statement of tenancy terms to be given to a tenant within 28 days of the commencement of a tenancy) but is now redundant as the repeal Schedule to that Act has already (accidentally) repealed Article 4.
Section 2:

Tenant to be given notice regarding certain past matters:

Section 2 introduces Schedule 1. That Schedule will ensure that those tenants who would have received notices under Article 4 of the 2006 Order but did not do so because of its accidental repeal, and who are still in a private tenancy on the date Section 1 of the Act comes into operation, receive notices from their landlords regarding certain past matters.
Section 3:

Tenant to be provided with a receipt for payment in cash

Section 3 inserts a new Article 5 into the 2006 Order in substitution for the current Article 5. The new Article introduces a requirement that, where rent or certain other payments in connection with a tenancy are paid in cash, the landlord (or prospective landlord or former landlord as the case may be) of the tenancy must provide the tenant (or prospective tenant or former tenant), free of charge, with a written receipt detailing the payment date, what the payment was for, the amount paid, and, if any amount remains outstanding, that amount or, if no further amount remains outstanding, that fact.

Article 5(3) provides that where a payment of a single sum covers two or more payments then the receipt must state how the sum is apportioned between each payment and, in respect of each payment, if any amount remains outstanding, that amount, and if no further amount is due, that fact.

Article 5(4) provides that, in the case of a payment in satisfaction (or part satisfaction) of an obligation arising under a tenancy, where it is not possible for the person giving the receipt to state with certainty the amount that was required to satisfy the obligation, then the amount outstanding or the fact that nothing

remains outstanding, as the case may be, should be stated to the best of that person's knowledge and belief.

Article 5(5) requires that the receipt must be provided at the time the payment is made or, if that is not possible, as soon as reasonably possible after that time.

Article 5(7) provides that an offence is committed under the 2006 Order where a landlord fails to provide a receipt with the correct information or provides a receipt late. If the landlord has appointed a person to provide the receipt that person is also guilty in such circumstances (in addition to the landlord being guilty).

Article 5(8) defines landlord and tenant to include both former and prospective landlords and tenants.

The section also inserts new Articles 5ZA and 5ZB into the 2006 Order. The former concerns offences related to a continued failure by a landlord to give a written receipt under Article 5.

Under paragraph (1), a landlord who fails to give a written receipt with the correct information and is convicted in respect of that failure is deemed to have committed a further offence under Article 5 in respect of that failure where the failure continues for more than 14 days after conviction.

Under paragraphs (2) and (3), a landlord who receives a fixed penalty notice in respect of a failure to give a written receipt with the correct information and pays it but continues in that failure for more than 14 days after payment is guilty of an offence under the 2006 Order.

New Article 5ZB provides a defence in certain circumstances to a person charged with an offence under Article 5(7) or Article 5ZA(3), where a payment in cash was made in respect of rent and the tenancy in the case is a controlled tenancy.

Where the person is charged with an offence under Article 5(7), if the written receipt was given on time, the only incorrect information on the receipt relates to the amount of rent outstanding, and the incorrectly stated outstanding amount reflects the difference between the contractual rent and the rent limit, then it is a defence to prove that the landlord had a bona fide claim to that difference.

Where a person is charged with an offence under Article 5ZA(3), if the written receipt was given at any time before the end of the 14 day period beginning with the payment of the fixed penalty (including before the fixed penalty notice was given), the only incorrect information on the receipt relates to the amount of rent outstanding, and the incorrectly stated outstanding amount reflects the difference between the contractual rent and the rent limit, then it is a defence to prove that the landlord had a bona fide claim to that difference.

In consequence of the new Article 5 and new Articles 5ZA and 5ZB, this section amends Articles 50 and 66 of the 2006 Order. Article 50(2) provides that where a landlord makes an entry in a rent book or similar document that shows the

tenant as being in arrears of an amount that, on account of the rent limit, the tenant does not owe, the landlord is guilty of an offence (subject to a bona fide claim defence). Subsection (3) amends Article 50 to insert a new paragraph (4) that clarifies that "similar document" in paragraph (2) of that Article does not include a receipt under Article 5(2) (and thereby ensures that the prosecution and punishment of offences in relation to receipts for cash payments are carried out only under Articles 5 to 5ZB).

Article 66(1) includes provision that the service of a document, required or authorised to be served under the 2006 Order on a landlord, is deemed to be so served if it is served on any agent of the landlord named as such in the rent book. As the substitution of a new Article 5 removes the requirement for landlords to give tenants a rent book, it is no longer appropriate to refer in Article 66(1)(a) to "the rent book"; and therefore subsection (4) of this section changes it to "a rent book" (acknowledging that certain landlords and tenants may continue to operate a rent book system voluntarily).

Subsections (5) and (6) of this section amend Articles 68 and 68A of the 2006 Order respectively. The amendment of Article 68(1) ensures that the offences under Articles 5(7) and 5ZA(3) (including where further offences under Article 5 are deemed to have been committed) are punishable on summary conviction with a fine not exceeding level 4 on the standard scale. By providing that those offences are "offences under this Order", they come within Article 68(3) and as such can be prosecuted by district councils.

The amendment of Article 68A provides that fixed penalty notices can be given in respect of the two offences, with the exception that a fixed penalty notice may not be given in respect of offences under Article 5(7) where they are deemed to have been committed by virtue of Article 5ZA(1). In the latter case the only available option is summary conviction. The amendment also provides that the maximum fixed penalty amount is one-fifth of the maximum fine payable on summary conviction.

Section 4:

Limit on tenancy deposit amount

This section inserts new Articles 5ZC and 5ZD into the 2006 Order.

New Article 5ZC(1) limits the amount of deposit that can be required to be paid or retained in connection with a private tenancy to no more than 1 months' rent.

Article 5ZC(2) explains what it means for a person to require the person to whom a tenancy deposit would otherwise be repaid to consent to the retention of the deposit.

Article 5ZC(3) provides a definition of 1 month's rent in cases where the rent under a private tenancy is not payable monthly.

Article 5ZC(4) provides that any landlord or other person who requires a tenancy deposit in excess of 1 month's rent to be paid or retained in connection with a private tenancy is guilty of an offence under this Order.

Article 5ZC(5) provides that where a person is convicted of such an offence and has received or retained a tenancy deposit in excess of 1 month's rent, the court that convicted the person has the power to order restitution of the excess to the person who paid it.

New Article 5ZD makes provision concerning the recoverability of a tenancy deposit paid in excess of 1 month's rent. Paragraph (1) provides that a landlord or other person who has not been paid a tenancy deposit cannot recover that deposit to the extent that it exceeds 1 month's rent under the tenancy. Paragraph (2) provides that a tenant or other person who has paid a tenancy deposit or had a tenancy deposit retained can recover the deposit to the extent that it exceeds 1 month's rent.

Paragraph (3) explains when a tenancy deposit is retained in connection with a private tenancy.

Subsections (3) and (4) of the section amend Articles 68 and 68A of the 2006 Order respectively. The amendment of Article 68(1) ensures that the offence under Article 5ZC(4) is punishable on summary conviction with a fine not exceeding level 4 on the standard scale. By providing that this offence is an "offence under this Order", it comes within Article 68(3) and as such can be prosecuted by district councils.

The amendment of Article 68A provides that fixed penalty notices can be given in respect of the offence. The amendment also provides that the maximum fixed penalty amount is one-fifth of the maximum fine payable on summary conviction.

Subsection (5) explains how certain provisions in Articles 5ZC and 5ZD are to have effect. Paragraphs (a) and (b) ensure that the offence in Article 5ZC(4) can only be committed where a "requirement" is made on or after commencement of the section.

Paragraph (c) ensures that Article 5ZD(1) does not prevent the recovery of a tenancy deposit in excess of 1 month's rent under a legal obligation (for example a contractual obligation) that existed before the commencement of the section.

Paragraphs (d) and (e) limit the effect of Article 5ZD(2) to deposits paid or retained on or after the commencement of the section, while also preventing recovery of deposits paid or retained on or after that time where they were paid or retained in connection with an obligation or right that existed before the commencement of the section (such as a contractual obligation to pay the deposit or contractual right to retain the deposit).

Section 5:

Increase in time limits for requirements relating to tenancy deposits

Section 5 amends Article 5B of the 2006 Order. The amendments, firstly, extend the time limit for a deposit to be protected in an approved scheme by changing the time limit in paragraph (3) from 14 days to 28 days and, secondly, give additional time for a landlord to provide the prescribed information to the tenant by amending paragraph (6)(b) from 28 days to 35 days.
Section 6:

Certain offences in connection with tenancy deposits to be continuing offences

Section 6 amends Article 5B of the 2006 Order by inserting a new paragraph 11A. Under paragraph (11) an offence is committed where a landlord fails to protect a tenancy deposit or give the prescribed information within the required time. This new paragraph provides that those offences continue to be committed throughout any period during which the failure continues. The result of this is that there will be no time barrier on prosecuting a person who fails to comply with the requirements of the Article.
Section 7:

Regulation of rent

Rent decreases

This section inserts a new Article 5C into the 2006 Order. New Article 5C gives to the Department the power to make regulations to introduce a rent decrease of up to 10% or a rent freeze for a maximum period of 4 years. Under paragraph (6) the Department is under a duty to carry out a consultation as to whether it should exercise those powers. A report on the consultation must be prepared and laid before the Assembly within 6 months of the date this Act receives Royal Assent. If the Department does not make regulations under the Article within 12 months of laying the report, the Article (and therefore the power to make the regulations) ceases to have effect.

Restriction on frequency of rent increases

This section inserts new Articles 5D and 5E into the 2006 Order. New Article 5D applies to any private tenancy except a controlled tenancy and provides that the rent payable under a private tenancy may not be increased within the period of 12 months beginning with the date on which the tenancy is granted or within the period of 12 months beginning with the date on which the last increase began.

The Article also gives the Department the power to specify circumstances, such as where a house is renovated or extended, in which the restrictions on rent increases do not apply. The Department is also given the power to make regulations to amend the time periods during which rent increases are prohibited to periods above 12 months, up to a maximum of 2 years.

New Article 5E applies to any private tenancy except a controlled tenancy and provides that a rent increase only takes effect if a landlord gives the tenant a written notice that complies with the requirements of that Article. The notice must specify the date of the increase and the amount of rent payable after the increase; the date specified must not be less than 3 months after the date the notice is given; and the notice must also contain such other information and be in such form as may be prescribed by regulations made by the Department.

Subsection (3) of the section amends Article 72 of the 2006 Order. Article 72 contains provisions concerning the making of regulations under the Order. It is amended here to provide that regulations made under Article 5C or Article 5D are subject to the draft affirmative procedure.

It is also amended to provide that where the Department proposes to make regulations under Article 5D to change a time period during which rent may not be increased it must, before laying the draft of the regulations before the Assembly, consult representatives of landlords, representatives of tenants and such other persons as it considers appropriate.

Section 8:

Fire, smoke and carbon monoxide

Section 8 is intended to reduce the risk of injury or death caused by fire, smoke and carbon monoxide in private tenancies.

This section inserts new Articles 11A to 11F into the 2006 Order which set out new requirements on private landlords in relation to the provision of fire, smoke and carbon monoxide detectors and the duties on landlords and tenants with regard to these.

New Article 11A provides that the requirements and duties in Articles 11B to 11F apply to all private tenancies, whether granted before or after this section comes into operation, but in respect of those tenancies granted before such commencement only from a date in the future to be prescribed by the Department in regulations.

New Article 11B requires landlords to keep in repair and proper working order sufficient appliances for detecting and warning of fire, smoke and carbon monoxide (in the case of carbon monoxide, at levels where the gas is harmful to people).

This Article also allows the Department by regulation to set minimum standards for the purpose of determining whether those duties have been complied with (which may include standards as to the number, type and condition of appliances to be installed in certain specified circumstances), and provides that a breach of one of those duties is an offence under the 2006 Order.

Under new Article 11C the tenant under a private tenancy must take proper care of the detection appliances installed and must make good any damage wilfully or

negligently done or caused to those appliances by the tenant or any other person lawfully on the premises.

New Article 11D deals with the situation where a tenancy is part of a building and provides that the duties under Article 11B may require the landlord to position appliances in a part or parts of the building not included in the tenancy.

New Article 11E clarifies that the duties imposed on the landlord by Article 11B do not require the landlord to carry out works or repairs for which the tenant is liable as a result of Article 11C.

New Article 11F limits the extent to which the duties under Article 11B require the landlord to carry out works by providing that the landlord is only under a duty to carry out such works where the landlord has knowledge of the need.

New Articles 11B to 11F mirror many of the provisions in existing Articles 7 to 11 of the 2006 Order, and seek to apply the same rules, modified as appropriate, in the context of the provision of fire, smoke and carbon monoxide detectors.

Subsections (3) to (6) of this section amend Articles 68 and 68A of the 2006 Order. The amendment of Article 68(1) ensures that a breach of a duty under Article 11B is punishable on summary conviction with a fine not exceeding level 4 on the standard scale. By providing that this offences is an "offence under this Order", it comes within Article 68(3) and as such can be prosecuted by district councils.

The amendment of Article 68A provides that fixed penalty notices can be given in respect of the offence. The amendment also provides that the maximum fixed penalty amount is one-fifth of the maximum fine payable on summary conviction.

Section 9:

Energy Efficiency Regulations

Section 9 introduces Schedule 2 and notes that the Schedule gives the Department a power to make regulations concerning the energy efficiency of dwelling houses let under a private tenancy.

Section 10:

Electrical safety standards Regulations

Section 10 introduces Schedule 3 and notes that the Schedule gives the Department a power to make regulations concerning electrical safety standards in dwelling-houses let under a private tenancy.

Section 11:

Validity requirements for notices to quit

Section 11 makes a number of amendments to Article 14 of the 2006 Order as well as inserting a new Article 14A.

It begins by substituting a new paragraph (1) into Article 14 which ensures that that Article will now only deal with notices to quit given by landlords (as opposed to dealing with notices to quit given by both landlords and by tenants) and provides that such notices will not be valid unless they are in the form prescribed by the Department, contain the information prescribed by the Department and are given a certain period of time before the notice is to take effect.

Paragraph (1A) (which sets out the periods of time before which the notice must be given) is amended to provide the following notice to quit periods:

(a) 8 weeks, if the tenancy has not been in existence for more than 12 months;

(b) 4 months, if the tenancy has been in existence for more than 12 months but not for more than 3 years;

(c) 6 months, if the tenancy has been in existence for more than 3 years but not for more than 8 years;

(d) 7 months, if the tenancy has been in existence for more than 8 years.

A new paragraph (3) gives the Department the power, by regulations, to amend those periods.

A new paragraph (4) explains that any such regulations under paragraph (3) can amend the periods in paragraph (1A) to provide different notice periods for different cases within the sub-paragraphs of that paragraph (e.g. in respect of the sub-paragraph dealing with tenancies in existence for more than 12 months but not more than 3 years, the regulations could provide notice periods of 10 weeks for tenancies between 12 months and 2 years, and 5 months for tenancies between 2 years and 3 years).

A new paragraph (5) allows the Department to prescribe by regulations different notice periods to those provided in paragraph (1A) for cases falling within the circumstances set out in new paragraph (6). The circumstances are that the tenant is in substantial arrears of rent; the tenant, or a member of the tenant's household, has engaged in serious anti-social behaviour in, or in the locality of, the dwelling-house; and the tenant, or a member of the tenant's household, is convicted of a relevant criminal offence. Under paragraph (9) the Department can, by regulations, add to the list of circumstances in paragraph (6).

Paragraph (7) provides, amongst other things, that regulations under paragraph (5) can make provision about the meaning of any expression used in paragraph (6) (circumstances in which the notice period can be different), or provide that any provision made by the regulations only applies to cases of a prescribed description that fall within the circumstances mentioned in paragraph (6).

Paragraph (8) sets out that the Department may not make regulations under paragraph (5) that come into effect before the end of the emergency period under the Private Tenancies (Coronavirus Modifications) Act (Northern Ireland)

2020; it also provides that that the Department must make regulations under paragraph (5) that come into effect within 2 years of this Act receiving Royal Assent.

The reason that the Department is put under a duty to exercise the power in paragraph (5) is that the new notice periods in paragraph (1A) do not come into effect until regulations under paragraph (5) are made. (See below on the commencement provisions for further detail on this.)

Subsection (6) of the section inserts a new Article 14A, which will deal with notices to quit to be given by a tenant, and provides that such notices will not be valid unless they are in writing and are given a certain period of time before the notice is to take effect.

Paragraph (2) of the new Article sets out the periods of time before which the notice must be given. 4 weeks' notice is required where the tenant has been in the house for 10 years or less, and 12 weeks' notice in all other cases.

Paragraph (3) states that paragraph (1) applies regardless of when the tenancy was granted.

The Article also gives the Department the power, by regulations, to alter the notice to quit period in relation to tenancies that have been in existence for more than 12 months but not more than 10 years to a period that is more than 4 weeks but not more than 12 weeks.

Paragraph (5) explains that any such regulations can provide that the notice to quit period is different for different cases (e.g. 4 weeks for tenancies between 12 months and 2 years, 8 weeks for tenancies between 2 years and 5 years and 12 weeks for tenancies between 5 years and 10 years).

Paragraph (6) ensures that any amendments made by the regulations are only relevant to those notices given after the amendment has come into operation. Notices already given will only have to comply with the rule in force at the time they were given.

Subsection (7) amends Article 72 (provisions concerning regulations) of the 2006 Order to provide that any regulations made under Articles 14 or 14A are subject to the draft affirmative procedure and, before being laid, to consultation with representatives of landlords, representatives of tenants and such other persons as the Department consider appropriate.

In consequence of the new paragraphs (1) and (1A) in Article 14, subsection (8) omits section 3 of the Housing (Amendment) Act (Northern Ireland) 2011. That subsection is the provision that provides the current versions of paragraphs (1) and (1A).

Subsections (9) and (10) introduce transitional provisions. Subsection (9) ensures that until the coming into operation of the requirement that a notice to quit given by a landlord must be in the prescribed form and contain the prescribed information, the notice to quit must be given in writing.

Subsection (10) ensures that until the coming into operation of the new paragraph (1A) in Article 14, the notice to quit periods for notice given by a landlord are as follows:

(a) 4 weeks, if the tenancy has not been in existence for more than 12 months;

(b) 8 weeks, if the tenancy has been in existence for more than 12 months but not for more than 10 years;

(c) 12 weeks, if the tenancy has been in existence for more than 10 years.

Finally, subsection (11) provides that any amendments made by the section do not apply in relation to notices to quit given before the section comes into operation. The effect of this is that if a notice to quit, given before such commencement, complies with the rules in force at the time it was given, it will be valid.

Section 12:

Payment options for tenants: power to make provision and duty to consult

This section gives the Department the power to make regulations to ensure that a tenant is given options when a private tenancy is granted as to the method of payment of rent and other sums in respect of the tenancy.

Subsection (2) sets out the provision that the regulations can make in particular. The regulations may:

- impose duties on prospective landlords to provide specified information or documents before the terms of a tenancy are agreed;
- require that tenancy agreements or proposed tenancy agreements contain specified terms or if they are in writing that they should be in a specified form;
- require a prospective landlord to specify methods of payments that must or must not be offered, or may or may not be agreed by the parties for the purposes of payment of rent or other sums due in respect of a tenancy;
- make provision as to the rights of tenants or landlords to vary any term of the tenancy as to the method of payment including provision restricting or excluding any such right;
- make provision for the consequences of a failure to accept or a failure to tender payment by a method agreed under a tenancy including provision as to whether or not the tenant is to be regarded as being in arrears;
- make provision for consequences of a breach of a prohibition imposed by the regulations or a failure to comply with a requirement imposed by them including provision that creates offences;
- amend any statutory provision within the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

- make such consequential, supplementary, transitory or transitional provision or such savings as the Department considers appropriate.

Any offence created by the regulations is not to be triable on indictment or punishable with imprisonment; and is not to be punishable with a fine exceeding level 4 on the standard scale.

Under subsection (5) the Department must carry out a consultation as to whether to exercise the power. The Department must prepare a report on the consultation and lay it with the Assembly before the end of the period of 18 months beginning with the day on which this Act receives Royal Assent.

Section 13:

Interpretation

The Act makes frequent use of the phrase "the 2006 Order" and this section explains that it refers to the Private Tenancies (Northern Ireland) Order 2006.

Section 14:

Commencement

Subsection (1) provides that this section and sections 12, 13 and 15 come into operation on the day after the day on which the Act received Royal Assent.

Subsection (2) ensures that the provisions of the Act that contain regulation making powers, with one exception, come into operation on that day also, but only to the extent that they confer those powers. This will allow the Department to make regulations under the Act in anticipation of the commencement of the substantive provisions of the Act.

Subsections (3) to (6) have two main effects. Firstly, under subsections (4) and (5), the provisions of section 11 that those subsections apply to come into operation on the later of this Act receiving Royal Assent and the emergency period under the Private Tenancies (Coronavirus Modifications) Act (NI) 2020 coming to an end. Secondly, under subsection (6), the new notice to quit periods for notices to quit given by landlords only come into effect on the coming into operation of the first regulations made under new paragraph (5) of Article 14 (regulations providing different notice to quit periods for circumstances set out in paragraph (6) of that Article).

Subsection (7) provides that the other provisions of the Act will come into operation on such day or days as the Department for Communities may by order appoint.

Subsection (8) provides that an order under the section may make such transitionary or transitional provision, or savings, as the Department considers appropriate.

Section 15:

Short title

This provides that the Act may be cited as the Private Tenancies Act (Northern Ireland) 2022.

Schedule 1:

Tenant to be given notice regarding certain past matters

This Schedule deals with tenancies granted and variations to tenancy terms made between the repeal of Article 4 of the 2006 Order on the 30 June 2011 and the coming into operation of the new Articles 4A and 4B where the tenancy is still in existence on that coming into operation.

Paragraphs 1 and 2 of the Schedule provide for the giving of certain notices to the tenants of such tenancies. The tenant should be given a notice of prescribed particulars and other prescribed information relating to the tenancy and any prescribed variations within 28 days of the commencement of section 1. These notices must be given free of charge.

Paragraphs 1(3) and 2(4) include a concession to landlords who have already given a notice that substantially meets the requirements of the Schedule at any time between granting the tenancy or, as the case may be, varying the prescribed term and the commencement of section 1, such that they are to be regarded as having complied with the notice requirements in paragraphs 1 and 2.

Where a landlord fails to comply with a requirement under the Schedule to give a notice, the landlord is guilty of an offence. In addition, where a landlord is convicted of such an offence and the failure continues for more than 14 days after conviction, the landlord is deemed to have committed a further such offence in respect of the failure. If a landlord is given a fixed penalty notice in respect of a failure to give a notice under this Schedule and pays it but the failure continues for more than 14 days after payment of the penalty, the landlord is guilty of an offence.

A person guilty of an offence under the Schedule (including where a person is deemed to have committed a further offence after an initial conviction) is punishable on summary conviction with a fine not exceeding level 4 on the standard scale. All offences under the Schedule can be prosecuted by district councils.

Paragraph 6 of the Schedule sets out a fixed penalty regime that applies to all offences under the Schedule (except in the case where a person has already been convicted and it is suspected that the failure to give the required notice continues).

Paragraph 7 provides that regulations under paragraph 1, 2 or 6 are subject to negative resolution.

Paragraph 9 explains that any expression that is used in both this Schedule and the 2006 Order has the same meaning in this Schedule as in the Order.

Schedule 2:

Energy Efficiency Regulations

This Schedule inserts new Articles 11G and 11H into the 2006 Order.

New Article 11G(1) gives to the Department the power, by regulations, to prohibit persons granting a private tenancy of certain houses or continuing to let out certain houses already let on a private tenancy.

Paragraph (2) sets out the houses that the Department can make such rules in relation to. They are houses that have an energy performance certificate and that fall below such level of energy efficiency (as demonstrated by the certificate) as is provided for by the regulations.

Paragraph (3) sets out that the regulations can provide for houses of a description provided for in the regulations, which would otherwise come within the rules prohibiting the letting or continued letting of certain houses, to be exempt from such rules. The regulations can also provide for an exemption that is to have effect for a period of time and is subject to the condition that specified works or measures for improving efficiency in the use of energy in the dwelling-house are carried out within that period (an "improvement exemption"). The regulations can also provide for exemption on such other grounds as may be provided for in the regulations.

Paragraph (5) sets out the provision that regulations that provide exemptions can make in particular. Such regulations may:

- designate a prescribed person or prescribed persons (the "authority") to make exemptions;
- make provision regarding the making of applications to the authority, including evidence which must or may be provided with applications;
- provide that exemptions can have effect for a specified period of time (including providing for the authority to determine that period);
- provide that an improvement exemption may have a limit on the estimated cost of works or measures that may be specified (including a limit set by reference to the value of the dwelling-house or any other prescribed circumstances);
- provide for the authority to maintain a publicly-accessible register of exemptions granted;
- provide for appeals to a prescribed person or body against decisions regarding exemptions;
- provide for the inspection of dwelling-houses for the purposes of an application for an exemption or for the purposes of an appeal;
- provide for cases where an application or appeal is made in respect of a dwelling-house which is (on the date of application or appeal) let under a private

tenancy, for the applicant or appellant to be exempt from a prohibition imposed under paragraph (1)(b) pending the outcome of the application or appeal;

- set out the consequences of providing false or misleading information in an application to the authority or in proceedings on an appeal (including the provision to create criminal offences or invalidate exemptions);
- allow for a person who acquires an estate in a dwelling-house to be exempt from a prohibition in respect of that dwelling-house for a prescribed period of time.

Paragraph (6) sets out that the regulations may provide that if a person is granted an improvement exemption, and complies with any prescribed conditions, the works or measures specified in the exemption are to be regarded, for the purposes of Article 12 of the 2006 Order, as works that the person is under a duty to execute. (Article 12 gives a landlord, and persons authorised by him for the purpose, a right of entry to a premises comprised in the tenancy in order to carry out any works which the landlord *is under a duty to execute*.)

Paragraph (8) provides that, in Article 11G, "private tenancy" does not include a protected tenancy or a statutory tenancy, and "energy performance certificate" has the meaning given by the Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008 or, in case the system used for determining domestic energy efficiency changes, such other statutory document issued for the purpose of determining or recording the energy performance or efficiency of dwelling-house as may be prescribed by regulations made by the Department.

New Article 11H(1) gives the Department the power, by regulations, to create offences for breaches of prohibitions imposed by regulations under Article 11G(1).

Paragraph (2) provides that regulations under Article 11G may provide that an offence is committed where a person is granted an improvement exemption which allows a house to be let out and they let that house, but they fail, without a reasonable excuse, to complete the works required within the timescale specified in the improvement exemption and the house remains insufficiently energy efficient at the end of the specified time period.

Paragraph (3) provides that regulations may allow inspections to a dwelling house which has been granted an improvement exemption to ascertain if the improvements have been made (and therefore if an offence has been committed or not).

Paragraph (4) gives the Department the power, by regulations, to set out circumstances which may or may not constitute a reasonable excuse for failing to carry out the works or measures specified within the period of time granted in an improvement exemption. Such circumstances may include circumstances where the person ceases to hold an estate in the property.

Paragraph (5) sets out limits on the punishments that may be prescribed for offences created by regulations under Article 11G. Such offences may not be

triable on indictment, punished with imprisonment or punishable with a fine exceeding level 5 on the standard scale. This final limit is subject, in the case of an offence in respect of the continued letting out of a dwelling-house, to paragraphs (6) to (9) however.

Paragraph (6) provides that paragraphs (7) and (8) apply where regulations under Article 11G create an offence in respect of the continued letting out of a dwelling-house.

Paragraph (7) sets out that the regulations must provide that in cases where an offence has been committed in granting a private tenancy or letting out a house, a person is convicted in respect of that offence, after that initial conviction the house continues to be let and the offender is convicted in respect of that continued letting, the punishment is a fine not exceeding one hundredth of the level 5 fine on the standard scale for each day or part of day the offence continues. This allows the punishment to be linked to the length of time that the letting continues after the initial conviction.

Paragraph (8) sets out that the regulations must provide that where a person receives and pays a fixed penalty notice in respect of the granting or continued letting of a dwelling-house but continues to let out the house in defiance of the prohibition, on conviction they can be fined for this 'post payment' offence with a fine not exceeding one hundredth of the level 5 fine on the standard scale for each day or part of day the offence continues.

Paragraph (9) provides that any fine imposed by virtue of paragraph (7) or (8) may result in a fine which exceeds level 5 on the standard scale depending on the length of the continuing offence.

Paragraph 3 of the Schedule amends Article 68(3) (prosecution by appropriate district council) of the 2006 Order to provide that district councils may prosecute any offence created by regulations under Article 11G.

Paragraph 4 amends Article 68A to provide that fixed penalty notices can be given in respect of offences created by regulations under Article 11G. Although this general provision is subject to a new paragraph (1A) which provides that a fixed penalty notice for such offences may not be given in certain circumstances.

New paragraph (1A) provides that where a person has been convicted of an offence in respect of the granting or letting of a dwelling-house and the suspicion is that the person continues to let out the house in contravention of a prohibition, a fixed penalty notice may not be given in respect of the suspected continued letting. Where a person has been convicted, any subsequent action in respect of a suspected continued letting must be way of prosecution, a fixed penalty notice may not be given.

Sub-paragraph (c) inserts paragraphs (8A), (8B) and (8C) into Article 68A of the 2006 Order.

Paragraph (8A) provides that the amount of fixed penalty notices for offences created by regulations under Article 11G will be determined by the district

council. This can be an amount not exceeding one fifth of the amount prescribed as the maximum fine for that offence but subject to (8B) and (8C).

Paragraph (8B) sets out the circumstances where paragraph (8C) applies - where a person grants a tenancy or continues to let out a dwelling house under a private tenancy in breach of a prohibition imposed under Article 11G(1)(a) or (b) ('the initial breach') and the person is given a fixed penalty and pays it but after having paid it an authorised officer has reason to believe that the person is still committing an offence by continuing to let out the dwelling house in respect of which the initial breach was committed.

Paragraph (8C) provides that where it applies the penalty payable is an amount determined by the council being an amount not exceeding one-five-hundredth of the maximum fine for that offence for every day or part of a day for which it appears to the officer that the letting has continued after payment and accordingly the penalty payable may exceed one-fifth of the amount prescribed as the maximum fine for that offence.

Paragraph 5 amends Article 72(3) of the 2006 Order to insert a reference to Article 11G; the effect of this amendment is to provide that regulations may not be made under Article 11G unless a draft has been laid before and approved by resolution of the Assembly. Paragraph 5 also amends Article 72 to provide that before making regulations under Article 11G the

Department must consult the Department for the Economy, the Department of Finance, district councils, such persons as appear to the Department to be representative of landlords, such persons as appear to the Department to be representative of tenants and any other people the Department considers appropriate.

Schedule 3:

Electrical Safety Standards Regulations

This Schedule inserts new Articles 11I, 11J and 11K into the 2006 Order.

New Article 11I provides that the Department may make regulations which impose duties on landlords which will make it obligatory for any domestic private rented property to meet prescribed electrical safety standards.

Paragraph (2) provides the Department with the regulation making power to prescribe those standards and provides that such standards will relate to the installations in a dwelling-house for the supply and use of electricity, and to electrical fixtures, fittings and appliances provided by the landlord.

Paragraph (3) provides that the duties imposed under the regulations may include duties to ensure that a qualified person has checked that the electrical safety standards are met; sub-paragraph (4) provides that the regulations may make provision about how and when checks are carried out and who is qualified to do them; Paragraph (5) provides that the regulations may require the landlord to undertake works as a result of checks carried out by the qualified person; and

Paragraph (6) provides that the regulations may require the landlord to obtain a certificate from the qualified person confirming the electrical standards are met, give a copy of the certificate to the tenant or any other person specified or, where the electrical safety standards are not met, obtain from the qualified person a written description of the works required to meet the standards.

New Article 11J gives the Department the power to create offences for breaches of duties imposed by Article 11I regulations. However, any offence created is not to be triable on indictment or punishable with imprisonment; and is not to be punishable with a fine exceeding level 5 on the standard scale.

New Article 11K sets out provision that the regulations may make for the purpose of enforcing any duty imposed by the regulations. That provision can include requiring the landlord to take remedial action and giving to district councils the power to arrange for remedial action to be taken with the consent of the tenant. Regulations may also make provision about procedure, landlord representations, appeals against proposed remedial action and the recovery of costs by district councils where they have arranged for remedial action (including for the recovery of costs from an agent of the landlord up to the total amount held by the agent for the landlord, and for the charging of land in relation to which the costs were incurred).

Paragraph 3 of the Schedule amends Article 68(3) (prosecution by appropriate district council) of the 2006 Order to provide that district councils may prosecute any offence created by virtue of Article 11J.

Paragraph 4 amends Article 68A of the 2006 Order to provide that a fixed penalty notice may be given in respect of any offence created by virtue of Article 11J up to a maximum amount of one-fifth of the maximum fine payable on summary conviction.

Paragraph 5 amends Article 72 of the 2006 Order, substantively, in two ways. Firstly, it amends paragraph (3) and inserts a new paragraph (3A) that provides that where regulations under Article 11I(1) contain provision for the charging of land in respect of district council remedial costs, such regulations are subject to the draft affirmative procedure. Secondly, it inserts a new paragraph (7) that provides that regulations under Article 11I must first be consulted on with district councils, representatives of landlords, such persons as appear to the Department to be representative of tenants and such other persons as the Department considers appropriate. A new paragraph (8) explains that where regulations under Article 11I are subject to the draft affirmative procedure the consultation must take place before the regulations are laid before the Assembly.